

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:16-CR-20
v.)	
)	Judge Collier
MARK HAZELWOOD,)	
)	
Defendant.)	

EXPERT REPORT ON SENTENCING OF BENJAMIN S. WILNER, Ph.D.

Alvarez & Marsal Disputes and Investigations, LLC (“A&M”) has been retained by counsel representing the Defendant, Mark Hazelwood, to comment on the alleged customer loss in the aforementioned matter. In particular, in this Expert Report, I, Benjamin S. Wilner Ph.D., am evaluating data on sentencing of people convicted of federal crimes in the last few years.

This Expert Report presents certain facts, patterns and trends related to the convictions and history of Mr. Hazelwood. I find that roughly three-quarters of individual offenders like Mr. Hazelwood Actually Received less than their Minimum Recommended Sentence.

I generated these facts, patterns and trends by solely reviewing data I obtained from the United States Sentencing Commission (“Sentencing Commission”) Datafiles for Individual Offenders (“Datafiles”), which are located at <https://www.ussc.gov/research/datafiles/commission-datafiles>, as well as manuals describing these Datafiles, which are located at <https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2016/GLMFull.pdf> and https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/USSC_Public_Release_Codebook_FY99_FY17.pdf.

I reserve the right to modify and/or expand my opinions as I obtain and analyze additional information.

No one from A&M who has contributed to this engagement has any known financial interest in any party to the matter. A&M’s compensation is neither based nor contingent on the results of this analysis.

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I. Qualifications

My qualifications are stated in my curriculum vita, which is attached as *Exhibit 1*. That Exhibit details my education, credentials, testimony, publications and relevant presentations.

I am a Managing Director at Alvarez & Marsal Disputes and Investigations, LLC. I have performed economic and statistical analyses in a great variety of engagements, including financial analysis, contract losses, a wide range of class action, intellectual property and lost income matters. In addition to testifying in a variety of matters, I also serve as a business consultant. For example, I have been retained by the U.S. Department of Homeland Security to economically and statistically analyze various proposed policies. For one such project, I received a special commendation from the Commissioner of U.S. Customs and Border Protection for revising a \$2.5 billion annual tariff. I also have been retained as a statistician by the Office of Mortgage Settlement Oversight, the Illinois Department of Insurance, the National Science Foundation and multiple corporations.

I have a Bachelor of Arts degree, Magna cum Laude with Distinction in Major in Mathematics and Economics from the University of Pennsylvania as well as a General Course Degree in Mathematics and Statistics from the London School of Economics. I was awarded a Ph.D. in Managerial Economics and Decision Science from the Kellogg Graduate School of Management at Northwestern University.

I have served as a professor of economics, finance and statistics in the business schools at the University of Michigan, the University of Iowa, Northwestern University and the Helsinki School of Economics. I received multiple teaching awards.

My research has been published in the peer reviewed academic journals including the *Journal of Finance*, the leading academic journal in finance. I have been awarded research grants from multiple universities as well as from the United States Government's National Science Foundation. My research has been extensively cited. For example, the former President of the University of Chicago relied on my undergraduate thesis as the theoretical basis for one of his published research papers. I also served as a referee for multiple academic journals and textbooks.

As an undergraduate, I spent three years as a research assistant to the 1980 Nobel Prize winner Lawrence R. Klein. Dr. Klein was awarded the Nobel Prize in Economics for economic and statistical forecasting. As a graduate student, I studied under Roger Myerson, who won the 2007 Nobel Prize in Economics for a type of game theoretic modeling, and Dale Mortensen, who won the 2010 Nobel Prize in Economics for his study of labor markets.

II. The Source Data

The Datafiles from Sentencing Commission are available for all years from 2002 through 2017, inclusive. A separate datafile exists for each year. For the purposes of this analysis, I downloaded files for 2014 – 2017.

Each file possesses a voluminous number of details about all individual offenders in each year such as the offenses committed, sentences recommended, actual sentences given, and information about the offenders themselves. In fact, there are more than ten thousand data fields associated with each offender.

As shown in the table below, each annual data file is very large. Between 2014 and 2017, the Datafiles contain information on 281,454 individual offenders and have information on 25,451 unique data fields.

Table 1: Data Description				
Year	Number of Individual Offenders	Number of Data Fields	Pieces of Data	Size of Data File
2014	75,836	25,001	1,896 million	2.7GB
2015	71,003	12,819	910 million	1.7GB
2016	67,742	22,408	1,518 million	2.4GB
2017	66,873	20,902	1,398 million	2.3GB
Unique Total	281,454	25,451	5,722 million	

Given these file sizes, I had to utilize a specialized software package that is commonly utilized to perform statistical and quantitative analyses called Statistical Analysis System (“SAS”).

Prior to commencing my analyses, I combined the data for these four years into one single, analytical database.

III. Analysis

To generate conclusions relevant to the matter at hand, I sought to identify individual offenders that were similarly situated to Mr. Hazelwood. I utilized specific criteria that allowed me to narrowly define groups of similar individual offenders. However, these groups could not be too narrowly defined, otherwise, my results likely would not be robust.

Consequently, I defined multiple groups each using slightly different criteria. As described below, the general similarities I found in my analysis of these multiple groups enhances the robustness of my conclusions. The fact that I am able to generate similar conclusions from multiple analyses can be used to demonstrate the overall soundness of my conclusions.

The analyses described in the next Section primarily compare Recommended Sentences and Actual Sentences given. It is my understanding that the Sentencing Commission has developed formulas that assign individual offenders to Final Offence Levels based upon their conviction and other factors. The Sentencing Commission then has a chart that states the number of months that it Recommends each individual offender should be sentenced to based upon the Final Offence Level these formulas imply.

These Recommended Sentences generally are a range with a minimum Recommended Sentence and a maximum Recommended Sentence. In this Expert Report, I primarily analyze the Minimum Recommended Sentence. In the Datafiles, the Minimum Recommended Sentence is denoted with the field name “GLMIN.”

The Actual Sentence given to an individual offender is denoted with the field name “SENTTOT0.”

Having analyzed thousands of datasets in my career, I find that datasets often need to be cleaned for inconsistent definitions in order to generate meaningful conclusions. In this matter, there was one data cleaning step that I had to perform, which related to how the Datafiles coded life sentences. While the Recommended Sentence data fields coded life sentences with a value of 9,996 months (approximately 833 years), life sentences in the Actual Sentence data field are coded with a value of 470 months (approximately 39 years). In order to allow for an accurate comparison of Recommended Sentences and Actual Sentences, I conservatively updated the value of a Recommended life sentence to be 470 months in the SAS database I analyzed.

IV. Findings

In the first set of analyses I performed, I constructed a group of individual offenders who were convicted between 2014 and 2017 where the Primary Offense in their conviction was Fraud; their Criminal History Category was I (which corresponds to individual offenders with very little to no criminal history), and the Sentencing Commission’s formulas assign that offender to a Final Offense Level of between 32 and 38.

Table 2 below shows that three-quarters of the individual offenders Actually Received sentences below the Minimum Recommended Sentence.

Table 2: Distribution of Actual Sentences Relative to Recommended Range			
Individuals Sentenced from 2014-2017 with a Primary Offense Category of Fraud, a Criminal History Category of I, and a Final Offense Level between 32 and 38			
Year	Number of Individual Offenders	Count Actual Sentence Below Recommended Range	% Actual Sentence Below Recommended Range
2014	192	150	78%
2015	228	177	78%
2016	121	86	71%
2017	143	101	71%
Total	684	514	75%

For individual offenders convicted of Fraud, the Sentencing Commission also possesses data on the amount of losses that the fraud caused. Table 3 below provides data on individual offenders in 2017 whose Primary Offense Category was Fraud, had a Criminal History Category of I and

were sentenced under the Primary Guideline of 2B1.1.¹ In this analysis, I included all such individual offenders irrespective of the Final Offense Level to which the Sentencing Commission's formulas assigned them. Given the nature of Mr. Hazelwood's conviction, for presentation purposes, I eliminated individual offenders whose convictions generated losses of less than \$40,000.

Table 3: Recommended vs. Actual Sentences Across Loss Categories

Individuals Sentenced in 2017 with a Primary Offense Category of Fraud, a Criminal History Category of I, and the Primary Guideline is equal to 2B1.1

Loss Category	Loss Amount Range	Number of Individual Offenders	Minimum Recommended Sentence (months)	Average Actual Sentence Received (months)	Difference Between Recommended and Actual Sentences (months)	Actual Sentence as a % of Minimum Recommended Sentence	% Change from Minimum Recommended to Actual Sentence
6	\$0.04 – 0.095M	381	15.1	9.1	6.0	60.1%	39.9%
8	\$0.095 – 0.15M	231	16.7	10.2	6.5	61.2%	38.8%
10	\$0.15 – 0.25M	284	25.2	15.6	9.6	61.9%	38.1%
12	\$0.25 – 0.55M	448	31.1	19.0	12.1	61.1%	38.9%
14	\$0.55 – 1.5M	525	38.9	25.9	13.0	66.7%	33.3%
16	\$1.5 – 3.5M	341	56.7	39.0	17.7	68.8%	31.2%
18	\$3.5 – 9.5M	239	77.3	52.8	24.5	68.3%	31.7%
20	\$9.5 – 25M	132	115.5	71.5	44.0	61.9%	38.1%
22	\$25 – 65M	41	138.9	86.2	52.6	62.1%	37.9%
24	\$65 – 150M	10	171.5	72.7	98.8	42.4%	57.6%
26	\$150 – 250M	5	263.2	212.0	51.2	80.5%	19.5%
28	\$250 – 550M	3	220.0	160.0	60.0	72.7%	27.3%
30	>\$550M	9	293.3	117.9	175.5	40.2%	59.8%
Total		2,649	43.9	28.2	15.7	64.2%	35.8%

¹ United States Sentencing Commission, *Guidelines Manual* §2b1.1 (November 2012) specifies issues regarding economic loss and loss calculations.

Table 3 demonstrates that for almost all loss categories, individual offenders were Actually Sentenced to 60 – 70% of the Minimum Recommended Sentence.

Given the large number of individual offenders displayed in Table 3, I recalculated Table 3 by solely looking at individual offenders who were convicted in the Eastern District of Tennessee and displayed the results in Table 4 below. Given the small number of such individual offenders in the Eastern District of Tennessee, there is great variability in the percentage of Minimum Recommended Sentences that these individual offenders were Actually Sentenced.

Table 4: Recommended vs. Actual Sentences Across Loss Categories in the Eastern District of Tennessee							
Individuals Sentenced in 2017 with a Primary Offense Category of Fraud, a Criminal History Category of I, and the Primary Guideline is equal to 2B1.1							
Loss Category	Loss Amount Range	Number of Individual Offenders	Minimum Recommended Sentence (months)	Average Actual Sentence Received (months)	Difference Between Recommended and Actual Sentences (months)	Actual Sentence as a % of Minimum Recommended Sentence	% Change from Minimum Recommended to Actual Sentence
6	\$0.04 – 0.095M	2	9.0	3.5	5.5	38.9%	61.1%
8	\$0.095 – 0.15M	1	10.0	0.0	10.0	0.0%	100.0%
10	\$0.15 – 0.25M	1	15.0	15.0	0.0	100.0%	0.0%
12	\$0.25 – 0.55M	3	31.0	22.3	8.7	72.1%	27.9%
14	\$0.55 – 1.5M	2	45.0	46.5	-1.5	103.3%	-3.3%
16	\$1.5 – 3.5M	3	72.7	31.3	41.3	43.1%	56.9%
18	\$3.5 – 9.5M	2	51.5	54.0	-2.5	104.9%	-4.9%
20	\$9.5 – 25M	1	108.0	30.0	78.0	27.8%	72.2%
22	\$25 – 65M	0	-	-	-	-	-
24	\$65 – 150M	0	-	-	-	-	-
26	\$150 – 250M	0	-	-	-	-	-
28	\$250 – 550M	0	-	-	-	-	-
30	>\$550M	0	-	-	-	-	-
Total		15	43.7	27.6	16.1	63.2%	36.8%

While there is greater variability within each loss amount range, the averages of all 15 individuals analyzed are highly consistent with the results from Table 3.

Tables 2 – 4 provide information on certain groups. I analyzed other groups as well and found that they produced similar results. Consequently, so as not to inundate the Finder of Fact, I limited the number of group analyses in this Expert Report to provide illustrative results.

In addition to analyzing groups comparable to Mr. Hazelwood, I also compared Mr. Hazelwood's Recommended Sentence to those convicted of other crimes in Table 5.

Table 5: Recommended vs. Actual Sentences by Primary Offense Category						
Individuals Sentenced in 2017						
Primary Offense Description	Number of Individual Offenders	Minimum Recommended Sentence (months)	Average Actual Sentence Received (months)	Difference Between Recommended and Actual Sentences (months)	Actual Sentence as a % of Minimum Recommended Sentence	% Reduction from Recommended to Actual Sentences
Drugs - Trafficking, Manufacturing, and Importing	1,332	158.9	112.5	46.4	70.8%	29.2%
Child Pornography	439	166.4	117.6	48.8	70.7%	29.3%
Sexual Abuse	97	157.8	133.1	24.6	84.4%	15.6%
Murder	21	168.6	167.1	1.5	99.1%	0.9%
Kidnapping/Hostage Taking	6	188.0	116.0	72.0	61.7%	38.3%

September 12, 2018



 Benjamin S. Wilner, Ph.D.

Exhibit 1



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Education

Kellogg Graduate School
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Managerial Economics
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University of
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Dr. Benjamin Wilner has more than twenty years of advisory, valuation, and general economic & financial services experience as a consultant, academic & testifier. He is a Ph.D. economist and statistician who regularly serves as a consultant and testifying expert witness on financial damages, economic & statistical issues.

Dr. Wilner's disputes experience encompasses many industries and a broad range of single plaintiff, class action and criminal disputes including antitrust liability & damages, business interruption, business valuations, economic analyses, intellectual property, labor, lost income, product liability, statistical data analyses, and other corporate and litigation related matters.

In his consulting practice, Dr. Wilner advises corporations and governments on economic and statistical issues. For example, in addition to redesigning statistical aspects of an automobile manufacturer's warranty process, Dr. Wilner received a special commendation from the Commissioner of US Customs & Border Protection for building an economic model to restructure a \$2.5 billion tariff, which has won praise by a Cabinet member, Congressional officials, and the industry.

Prior to joining Alvarez & Marsal, Dr. Wilner worked at other multinational consulting firms. He also has been a professor in the business schools at the University of Michigan, University of Iowa, Northwestern University, and the Helsinki School of Economics. Dr. Wilner was a research assistant for a Nobel Prize-winning economist and studied under two other Nobel Laureates. His work has been published in leading academic journals and textbooks as well as regularly cited in the academic and popular press. Dr. Wilner won several awards for teaching and research including a grant from the National Science Foundation.

Testimony before a Trier of Fact

- Arbitration Testimony in Topix Media Lab, LLC, v. Athlon Sports Communications, Inc., American Arbitration Association, November 2017
- Trial Testimony in Syngenta Crop Protection, LLC v. Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited, United States District Court, Middle District of North Carolina, September 2017
- Trial Testimony in Christine Ekallipse Moulouki v. Marie Paule Epee and Eric Ngado Epee, United States District Court, Northern District of Illinois, Eastern Division, July 2017
- Trial Testimony in The People of the State of Illinois v. Ronald A. Pieri, State of Illinois, Circuit Court of Lake County, October 2015
- Trial Testimony in Sleepy's LLC, v. Select Comfort Wholesale Corporation, et al., United States District Court, Eastern District of New York, May – June 2012 & July 2015
- Trial Testimony in Grater, Inc., and James T. Zavacki v. Kevin T. Keating and Keating & Shure, Ltd., State of Illinois, Circuit Court of Cook County, March 2015
- Trial Testimony in Think Tank Software Development Corporation et al. v. Chester Inc., et al., State of Indiana, County of Porter, March 2014
- Trial Testimony in Sharon P. Clark, Commissioner of the Kentucky Department of Insurance, in her Capacity as Rehabilitator of AIK Comp v. TransAmerica Insurance Company and TIG Insurance Company, Commonwealth of Kentucky, Franklin Circuit Court, Division Two, October 2012
- Trial Testimony in Mario Vara v. Integra Properties, Inc., Abe Polatsek, S&M Corporation and Michael Strick, State of Illinois, Circuit Court of Cook County, July 2011
- Trial Testimony in Indeck Power Equipment Company v. Professional Power Products, et al., State of Illinois, Circuit Court of Cook County, April 2010
- Trial Testimony in Saint-Gobain Autover USA, Inc., et al. v. Xinyi Glass North America, Inc., et al., United States District Court, Northern District of Ohio, Eastern Division, November 2009
- Trial Testimony in NSM Music Group, Ltd. and NSM Music, Inc. v. Synergy Law Group and Arthur E. Mertes, State of Illinois, Circuit Court of Cook County, June 2009



- Arbitration Testimony in Global Link Logistics, Inc., GLL Holdings, Inc., and Golden Gate Logistics, Inc., v. Olympus Growth Fund III, L.P., et al., American Arbitration Association, October 2008
- Arbitration Testimony in Sarah Sanford v. Society of Actuaries & Bruce Schobel, American Arbitration Association, August 2008
- Hearing Testimony in Chinitz v. Chinitz, State of Michigan, Circuit Court for the County of Oakland, May 2008
- Arbitration Testimony in BP Products North America, Inc. v. Laidlaw Educational Services, JAMS Arbitration, October 2007

Deposition Testimony

- Teresa Elward, et al. v. Electrolux Home Products, Inc., United States District Court, Northern District of Illinois, Eastern Division, August 2018
- Roger Coffelt, Jr., et al. v. The Kroger Co., The Pictsweet Company and CRF Frozen Foods LLC., et al., United States District Court, Central District of California, Riverside Division, May 2018
- Rick Lindsey v. Officer Michael Orlando, Officer Jamie Falardeau, the City of Chicago, Delta Airlines, Thomas Steinfels, and Marcella Pirvu, United States District Court, Northern District of Illinois, Eastern Division, March 2018
- Syncora Guarantee Inc. v. Alinda Capital Partners, LLC, American Roads LLC, Macquarie Securities (USA) Inc., and John S. Laxmi, Supreme Court of the State of New York, County of New York, December 2017
- Kelley Antekeier v. Laboratory Corporation of America, United States District Court, Eastern District of Virginia, Alexandria Division, November 2017
- Topix Media Lab, LLC, v. Athlon Sports Communications, Inc., American Arbitration Association, October 2017
- Christine Ekallipse Moulouki v. Marie Paule Epee and Eric Ngado Epee, United States District Court, Northern District of Illinois, Eastern Division, July 2017
- Syngenta Crop Protection, LLC v. Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited, United States District Court, Middle District of North Carolina, September 2016
- In re: Hardieplank Fiber Cement Siding Litigation, United States District Court, District of Minnesota, February 2016



- In re: Atlas Roofing Corporation Chalet Shingle Products Liability Litigation, United States District Court, Northern District of Georgia, December 2015
- Churchill Downs Incorporated v. Illinois Department of Revenue, Brian Hamer, as Director of The Illinois Department of Revenue, and Dan Rutherford as Treasurer of the State of Illinois, State of Illinois, Circuit Court of Cook County, August 2014
- Victor Tracy, Power of Attorney for Anne Tracy and Victor Tracy, Individually v. Robert K. Erickson, M.D., Lake County Neurosurgery, LLC, Advocate Condell Medical Center, State of Illinois, Circuit Court of Cook County, July 2014
- Marylee Arrigo v. Link Stop, Inc., et al., United States District Court, Western District of Wisconsin, October 2013
- Andrew C. Dillon v. Transportation Solutions Group, LLC, Freight Exchange of North America, LLC, 3PLogic, LLC, Transportation Solutions Enterprises, LLC and Todd Berger, United States District Court, Northern District of Illinois, Eastern Division, September 2013
- Grater, Inc., and James T. Zavacki v. Kevin T. Keating and Keating & Shure, Ltd., State of Illinois, Circuit Court of Cook County, September 2013
- Think Tank Software Development Corporation et al. v. Chester Inc., et al., State of Indiana, County of Porter, February 2012 & October 2009
- Continental Datalabel, Inc. v. Avery Dennison Corporation, United States District Court, Northern District of Illinois, Eastern Division, December 2011
- Ross v. Ross, Circuit Court of the Nineteenth Judicial Circuit, Waukegan, Lake County, Illinois, September 2011
- In re: IKO Roofing Shingle Products Liability Litigation, United States District Court, Central District of Illinois, Urbana Division, August 2011
- Jessica Ellen Legens, et al. v. Mark Alan Ikerman and Manheim Services Corporation, d/b/a Manheim Gateway St. Louis, et al., State of Illinois, Circuit Court of Madison County, November 2010
- Ronald Seymour v. Wausau Signature Agency, et al., United States District Court, Northern District of Illinois, Eastern Division, May 2010
- Neil Simon and Clarissa Simon v. Heritage Title Company, State of Illinois, Circuit Court of Cook County, December 2009
- Mario Vara v. Integra Properties, Inc., Abe Polatsek, S&M Corporation and Michael Strick, State of Illinois, Circuit Court of Cook County, December 2009



- Saint-Gobain Autover USA, Inc., et al. v. Xinyi Glass North America, Inc., et al., United States District Court, Northern District of Ohio, Eastern Division, October 2009
- Sleepy's LLC, v. Select Comfort Wholesale Corporation, et al., United States District Court, Eastern District of New York, July 2009
- Indeck Power Equipment Company v. Professional Power Products, et al., State of Illinois, Circuit Court of Cook County, September 2008
- NSM Music Group, Ltd. and NSM Music, Inc. v. Synergy Law Group and Arthur E. Mertes, State of Illinois, Circuit Court of Cook County, May 2008
- Maria Belbis, et al. v. County of Cook, United States District Court, Northern District of Illinois, Eastern Division, January 2008
- Bucyrus International, Inc. v. Price Erecting Company and Kentucky Rebuild Corp., State of Wisconsin, Circuit Court of Milwaukee County, October 2007
- Mark A. Sindecuse, M.D. v. Dean M. Katsaros, Katsaros & Associates, and CIB Marine Bancshares, Inc., United States District Court, Eastern District of Missouri, Eastern Division, June 2007
- Quentin Bullock et al., v. Michael Sheahan and Cook County, United States District Court, Northern District of Illinois, Eastern Division, September 2006

Awards

- National Science Foundation Grant, 1998
- Old Gold Research Fellowship, University of Iowa, Summer 1997
- Outstanding Professor, University of Iowa Panhellenic Council, Fall 1996
- Doctoral Teaching Award, Kellogg Graduate School of Management, 1994

Professional Memberships

- American Bar Association (Associate Status)
- American Statistical Association
- Credit Research Foundation (Research Fellow)



Publications

- “The U.S. Federal Crop Insurance Program in 2012 and Beyond,” (with Frank Schnapp) Trébol, July 2013
- “Profitability & Effectiveness of the Federal Crop Insurance Program,” (with Laura Carolan & Frank Schnapp), Crop Insurance Today, 44(2), pp. 28 – 32, May 2011
- “Economic and Accounting Analyses in Post-Acquisition Disputes,” (with Allen Burt and Matthew Paye) The SRR Journal, Spring 2010
- “Statistical Analyses Relation to Reductions In Force,” The SRR Journal, Spring 2009
- “Antitrust Analyses in Horizontal Mergers,” (with Thomas R. Jackson) The SRR Journal, Fall 2007
- “Options Backdating: The Latest Corporate Imbroglia,” (with Idris Raja) The SRR Journal, Spring 2007 (reprinted on mondaq.com)
- “Multi-Unit Auctions: A Comparison of Static and Dynamic Mechanisms” (with Alejandro Manelli and Martin Sefton), Journal of Economic Behavior and Organization, 61(2), pp. 304 – 323, October 2006
- “The Exploitation of Relationships in Financial Distress: The Case of Trade Credit,” Journal of Finance, February 2000
- “Everything you always wanted to know about discounting, but were afraid to ask: A Finance 101 Primer,” Credit and Financial Management Review, Summer 1999
- “Paying Your Bills: The Effect of Corporate Quality” September 1996
- Refereed for the American Economic Review, American Real Estate Society, Journal of Finance, the Journal of Business, Finance and Accounting, and John Wiley Publishers

